

**ARKANSAS COURT OF APPEALS**  
NOT DESIGNATED FOR PUBLICATION  
DIVISION IV

E05-46

ALEX SYLVESTER  
APPELLANT

March 15, 2006  
AN APPEAL FROM ARKANSAS  
STATE BOARD OF REVIEW  
[NO. 2004-BR-2263]

V.

DIRECTOR, ARKANSAS  
EMPLOYMENT SECURITY DEPT. and  
ARKANSAS STATE POLICE  
APPELLEES

AFFIRMED

WENDELL L. GRIFFEN, Judge

Alex Sylvester appeals from a decision from the Board of Review denying him unemployment benefits based on misconduct connected with the work on account of dishonesty. He argues that the Board's decision is not supported by substantial evidence. We hold that the Board's decision is supported by substantial evidence and affirm.

Appellant was terminated by the Arkansas State Police on April 7, 2004, and reinstated by the Arkansas State Police Commission on July 20, 2004. At the hearing on appellant's claim for unemployment benefits, Steve Clemons testified on behalf of the Arkansas State Police that appellant's discharge was associated with a sexual affair appellant had with the victim in one of his cases.<sup>1</sup> Clemons learned of the affair when the victim's husband complained that appellant caused him and his wife to divorce. When asked about the affair, appellant initially denied the relationship; however, he later admitted to having the

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<sup>1</sup>Clemons also testified that appellant was terminated for incompetence because he interviewed two suspects at the same time in a restaurant and allowed the suspects to enter his residence. These facts appear to be irrelevant for the purposes of this appeal.

affair. Clemons stated that an employee who does not give a truthful statement is in violation of Arkansas State Police policy, and the fact that the employee recants the false statement does not make the error any less of a violation. On cross-examination, Clemons stated that the prosecutor had no issues with appellant's credibility; however, the deputy prosecutor did have an issue with appellant's veracity. Clemons also testified that the sexual contact between appellant and the victim was consensual.

The employment security department denied appellant benefits pursuant to Ark. Code Ann. § 11-10-514(a) (Repl. 2002), which disqualifies an individual from receiving benefits if he is discharged for misconduct in connection with the work. The Arkansas Appeals Tribunal modified the decision to deny benefits pursuant to Ark. Code Ann. § 11-10-514(b), which disqualifies an individual from receiving benefits if he is discharged for misconduct specifically on the account of dishonesty.<sup>2</sup> It concluded that appellant's violation of the truthfulness policy "was willful and below the standard of behavior the employer had a right to expect." The Board of Review affirmed and adopted the Tribunal's decision.

We affirm the findings of the Board of Review if they are supported by substantial evidence. *Billings v. Director*, 84 Ark. App. 79, 133 S.W.3d 399 (2003). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support

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<sup>2</sup>Arkansas Code Annotated section 11-10-514 reads in pertinent part:

(a)(1) If so found by the Director of the Arkansas Employment Security Department, an individual shall be disqualified for benefits if he or she is discharged from his or her last work for misconduct in connection with the work.

\* \* \*

(b) If he or she is discharged from his or her last work for misconduct in connection with the work on account of dishonesty, . . . he or she shall be disqualified from the date of filing the claim until he or she shall have ten (10) weeks of employment in each of which he or she shall have earned wages equal to at least his or her weekly benefit amount.

a conclusion. *Id.* We view the evidence and all reasonable inferences therefrom in the light of the Board's findings. *Id.* Like a jury, an administrative body is free to accept or reject the testimony of witnesses. *Gunter v. Director*, 82 Ark. App. 346, 107 S.W.3d 902 (2003). Even if there is evidence that could lead the Board to reach a different decision, our review is limited to whether the Board could have reasonably reached its decision based upon the evidence presented. *Billings v. Director, supra.*

Appellant argues that the Board's decision that he was discharged from the Arkansas State Police for misconduct on account of dishonesty is not supported by substantial evidence. The employer has the burden of proving by a preponderance of the evidence that it discharged the employee for misconduct. *Maxfield v. Director*, 84 Ark. App. 48, 129 S.W.3d 298 (2003). Misconduct is defined as: (1) disregard of the employer's interests; (2) violation of the employer's rules; (3) disregard of the standards of behavior which the employer has a right to expect of his employees; (4) disregard of the employee's duties and obligations to the employer. *Id.* Mere unsatisfactory conduct, ordinary negligence, or good-faith errors in judgment or discretion are not considered misconduct unless they are of such a degree or recurrence as to manifest wrongful intent, evil design, or an intentional disregard of the employer's interests. *Id.* In addition, dishonesty is defined as "a disposition to lie, cheat or defraud; untrustworthiness; lack of integrity." *King v. Director*, 80 Ark. App. 57, 60, 92 S.W.3d 685, 686-87 (2002) (quoting *Olson v. Everett, Director*, 8 Ark. App. 230, 231, 650 S.W.2d 247, 248 (1983)). A good-faith belief that an assertion is true and with no intent to deceive is not adequate grounds for disqualification of benefits under Ark. Code Ann. § 11-10-514(b). *Id.*

Appellant argues that his relationship with the victim was consensual and, therefore, protected under both the federal and Arkansas Constitutions (citing *Lawrence v. Texas*, 539 U.S. 558 (2003); *Swope v. Bratton*, 541 F. Supp. 99 (W.D. Ark. 1982); *Jegley v. Picado*, 349

Ark. 600, 80 S.W.3d 332 (2002)). However, his argument misses the point. Appellant was not terminated for having a sexual relationship with the victim on one of his cases; rather, he was terminated for lying to his employer about the relationship when directly asked about it. As noted by the Appeals Tribunal, appellant's denial of the affair could be detrimental to the prosecution's case, as his denial of the relationship affects his veracity on the witness stand. The fact that appellant eventually admitted the relationship does not repair the damage to his credibility, nor does it make his misstatement less serious. Appellant's job required him to be an honest person, and his actions showed an intentional disregard for his employer's interests.

The Board's decision to deny appellant unemployment benefits for misconduct connected with his work on account of dishonesty is supported by substantial evidence. Accordingly, we affirm.

Affirmed.

GLADWIN and NEAL, JJ., agree.